



February 20, 2002

ENGROSSED HOUSE BILL No. 1306

DIGEST OF HB 1306 (Updated February 19, 2002 9:35 AM - DI 52)

Citations Affected: IC 13-11; noncode.

Synopsis: Waters of the state. Corrects a recodification error in the definition of "waters". Directs the environmental quality service council (EQSC) to study specified wetlands issues during the 2002 interim. Prohibits the adoption or enforcement of administrative rules concerning wetland issues until the EQSC has completed its study.

Effective: July 1, 1996 (retroactive); upon passage.

**Wolkins, Kuzman, Weinzapfel,
Cherry, Leuck**

(SENATE SPONSORS — GARD, HUME, FORD)

January 15, 2002, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

January 31, 2002, amended, reported — Do Pass.

February 4, 2002, read second time, amended, ordered engrossed.

February 5, 2002, engrossed. Read third time, passed. Yeas 86, nays 8.

SENATE ACTION

February 11, 2002, read first time and referred to Committee on Environmental Affairs.

February 19, 2002, amended, reported favorably — Do Pass.

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February 20, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED HOUSE BILL No. 1306

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-265 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 265. (a) "Waters",
3 for purposes of water pollution control laws and environmental
4 management laws, means:

5 (1) the accumulations of water, surface and underground, natural
6 and artificial, public and private; or

7 (2) a part of the accumulations of water;
8 that are wholly or partially within, flow through, or border upon
9 Indiana.

10 (b) The term "**waters**" does not include ~~(1)~~ a private pond or ~~(2)~~ an
11 off-stream pond, reservoir, or facility built for reduction or control of
12 pollution or cooling of water before discharge unless the discharge
13 from the pond, reservoir, or facility causes or threatens to cause water
14 pollution.

15 SECTION 2. [EFFECTIVE UPON PASSAGE] **(a) The**
16 **environmental quality service council shall do the following:**

17 **(1) To the extent the following are involved in the**

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implementation of a rational wetland management policy,
consider:

- (A) Protection of surface and ground water quality.
- (B) Control of location of accumulations of water.
- (C) Water rights.
- (D) Agricultural land use.
- (E) Nonagricultural land use.
- (F) Flood control.
- (G) Natural habitat protection.
- (H) Any other matter the council identifies.
- (2) Recommend principles for addressing state or local government management of and, with respect to state management, state agency responsibility for:
 - (A) land areas with wetland characteristics; and
 - (B) location and quantity of nonwetland surface water; not under the jurisdiction of the federal Clean Water Act (33 U.S.C. 1341).
- (3) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives, and responsibilities, including recommendations on:
 - (A) as a long term strategy, the types and functions of wetlands that are valued in particular geographic areas; and
 - (B) the means for restoring, maintaining, and protecting wetlands, including identification of agencies to be involved and the incentives to be offered.
- (4) Recommend the appropriate role and components of banking programs as part of a mitigation rule to foster private initiatives to restore wetlands in the context of a rational statewide wetland strategy.
- (5) Consider the options for statutory definition of "private pond" and explain the implications of each option.
- (6) Submit its final report on the matters referred to in subdivisions (1) through (5) before November 1, 2002, to:
 - (A) the governor; and
 - (B) the executive director of the legislative services agency.
- (b) The environmental quality service council shall consult with and otherwise involve in its proceedings for consideration of the matters listed in subsection (a):
 - (1) the director of the department of natural resources or the director's designee; and



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(2) representatives of all federal agencies involved in the regulation of wetlands.

(c) A state agency or board may not:

(1) adopt or amend an administrative rule concerning the definition of "wetlands" or "isolated wetlands"; or

(2) enforce an administrative rule promulgated after January 1, 2002, that concerns the definition of "wetlands" or "isolated wetlands";

until the environmental quality service council has submitted its final report under subsection (a)(6) or May 1, 2003, whichever occurs first.

SECTION 3. [EFFECTIVE JULY 1, 1996 (RETROACTIVE)] The amendment of IC 13-11-2-265(b) by this act applies retroactively to July 1, 1996. By its amendment of IC 13-11-2-265(b), the general assembly intends that there be no substantive difference in the law as amended by this act and the law as it was constituted before the enactment of P.L.1-1996 (recodification of IC 13).

SECTION 4. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1306, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 11 through 17.

Page 2, delete lines 1 through 7.

Page 2, line 8, delete "(c)" and insert "(b)".

Page 2, line 8, delete ":".

Page 2, line 9, delete "(1)".

Page 2, line 9, delete ":".

Page 2, line 10, delete "(A)".

Page 2, line 10, delete ",".

Page 2, line 11, delete "(B)".

Page 2, line 13, delete ",".

Page 2, line 15, delete "; and" and insert ".".

Page 2, run in lines 8 through 15.

Page 2, delete lines 16 through 19, begin a new paragraph and insert:

"SECTION 2. [EFFECTIVE UPON PASSAGE] (a) The environmental quality service council shall do the following:

(1) Consider policies for:

(A) protection of surface water quality;

(B) control of location of accumulations of water;

(C) water rights;

(D) agricultural land use;

(E) nonagricultural land use;

(F) flood control;

(G) natural habitat protection; and

(H) any other matter the council identifies as being involved in the implementation of a rational wetland management policy.

(2) Recommend principles for addressing state or local government management of and, with respect to state management, state agency responsibility for:

(A) land areas with wetland characteristics; and

(B) location and quantity of nonwetland surface water; not under the jurisdiction of the federal Clean Water Act (33 U.S.C. 1341).

(3) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland



Conservation Plan with goals, objectives, and responsibilities, including recommendations on:

- (A) as a long term strategy, the types and functions of wetlands that are valued in particular geographic areas; and
- (B) the means for restoring, maintaining, and protecting wetlands, including identification of agencies to be involved and the incentives to be offered.
- (4) Recommend the appropriate role and components of banking programs as part of a mitigation rule to foster private initiatives to restore wetlands in the context of a rational statewide wetland strategy.
- (5) Consider the options for statutory definition of "private pond" and explain the implications of each option.
- (6) Submit its final report on the matters referred to in subdivisions (1) through (5) before November 1, 2002, to:
 - (A) the governor; and
 - (B) the executive director of the legislative services agency.
- (b) A state agency or board may not:
 - (1) adopt or amend an administrative rule concerning the definition of "wetlands" or "isolated wetlands"; or
 - (2) enforce an administrative rule promulgated after January 1, 2002, that concerns the definition of "wetlands" or "isolated wetlands";

until the environmental quality service council has submitted its final report under subsection (a)(6) or May 1, 2003, whichever occurs first.

SECTION 3. [EFFECTIVE JULY 1, 1996 (RETROACTIVE)] The amendment of IC 13-11-2-265(b) by this act applies retroactively to July 1, 1996. By its amendment of IC 13-11-2-265(b), the general assembly intends that there be no substantive difference in the law as amended by this act and the law as it was constituted before the enactment of P.L.1-1996 (recodification of IC 13)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1306 as introduced.)

LYTLE, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1306 be amended to read as follows:

Page 2, line 1, after "surface" insert "**and ground**".

(Reference is to HB 1306 as printed February 1, 2002.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred House Bill No. 1306, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete line 17, begin a new line block indented and insert:

"(1) To the extent the following are involved in the implementation of a rational wetland management policy, consider:

(A) Protection of surface and ground water quality.

(B) Control of location of accumulations of water.

(C) Water rights.

(D) Agricultural land use.

(E) Nonagricultural land use.

(F) Flood control.

(G) Natural habitat protection.

(H) Any other matter the council identifies."

Page 2, delete line 1 through 10.

Page 2, between lines 37 and 38, begin a new paragraph and insert:

"(b) The environmental quality service council shall consult with and otherwise involve in its proceedings for consideration of the matters listed in subsection (a):

(1) the director of the department of natural resources or the director's designee; and

(2) representatives of all federal agencies involved in the regulation of wetlands."

Page 2, line 38, delete "(b)" and insert "(c)".

and when so amended that said bill do pass.

(Reference is to HB 1306 as reprinted February 5, 2002.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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